

A RESOLUTION

BY TRANSPORTATION COMMITTEE

01- R -0298

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH NORTHWEST AIRLINES, GIVING CONSENT AND APPROVAL FOR NORTHWEST AIRLINES TO ENTER INTO A CONSENT ORDER WITH THE GEORGIA ENVIRONMENTAL PROTECTION DIVISION, COVERING CLOSURE AND CARE OF A CONTAMINATED AREA WITHIN THE LEASED PREMISES OF NORTHWEST AIRLINES AIRLINES' AIRCRAFT MAINTENANCE BASE ("AMB") AT HARTSFIELD ATLANTA INTERNATIONAL AIRPORT, PURSUANT TO 40 CFR 264.310; AND FOR OTHER PURPOSES.

WHEREAS, the City and Northwest Airlines, are parties to an Amended and Restated Lease Agreement, dated January 1, 1974, under which Northwest Airlines leases its Aircraft Maintenance Base ("AMB") at Hartsfield Atlanta International Airport from the City; and

WHEREAS, Northwest Airlines formerly operated an underground storage tank ("UST") for storage of waste varsol (the "System") at the AMB, and

WHEREAS, Northwest Airlines and the Georgia Environmental Protection Division ("EPD") have agreed to resolve a dispute over the regulatory status of the System and how to address contamination resulting from releases from the System by entering into a Consent Order under which a small area of the Exclusively Leased Premises under the AMB Lease Agreement will be closed as a landfill and provide for post-closure care of that area for up to 30 years, as may be required by the EPD; and

WHEREAS, Northwest Airlines will assume responsibility for taking all actions and for assuming all costs of complying with the Consent Order, including post-closure care as required thereby, and for indemnification of the City of Atlanta in connection therewith; and

WHEREAS, it is reasonable and appropriate for the City, as landlord under the Lease Agreement, to give consent and approval for Northwest Airlines' entering into the Consent Order, as hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA that the Mayor be and hereby is authorized to execute on behalf of the City of Atlanta an Agreement with Northwest Airlines, which shall give consent to Northwest Airlines' entering into the said Consent Order with the EPD, with said Agreement to be substantially in the form and manner of that copy of same attached hereto as Attachment I and made a part hereof by reference.

BE IT FURTHER RESOLVED that the City Attorney be and hereby is directed to prepare said Agreement for execution by the Mayor.

BE IT FINALLY RESOLVED that the said Agreement shall not become binding upon the City of Atlanta, and the City shall incur no obligation nor liability thereunder until the same has been signed by the Mayor and delivered to Northwest Airlines.

AGREEMENT

THIS AGREEMENT (the "Agreement"), made and entered into as of _____, 2000, by and between the CITY OF ATLANTA, a duly chartered municipal corporation existing under the laws of the State of Georgia (the "City"), and Northwest Airlines, Inc., a corporation organized and existing under the laws of the State of Minnesota (NWA),

WITNESSETH:

WHEREAS, NWA leases its Aircraft Maintenance Base (AMB) at Hartsfield Atlanta International Airport from the City pursuant to an AMENDED AND RESTATED LEASE AGREEMENT, dated as of **January 1, 1974** (the "Lease"); and

WHEREAS, NWA formerly utilized an underground storage tank (UST) for storage of waste varsol at the AMB, and

WHEREAS, the waste varsol UST and soil containing waste varsol were removed in 1989, the appurtenant piping cleaned, and the excavation backfilled with soil obtained from off-site, and

WHEREAS, NWA replaced the UST with an aboveground storage tank (AST) at essentially the same location for storage of waste varsol; and

WHEREAS, NWA discontinued use of the AST and removed it on August 18, 1997, and obtained written approval from the Environmental Protection Division of the Georgia Department of Natural Resources (EPD) in doing so; and

WHEREAS, NWA and the Georgia Environmental Protection Division ("EPD") have agreed to resolve a dispute over the regulatory status of the site of the former waste varsol UST and AST and how to address contamination resulting from releases from that site by entering into a Consent Order in the form attached hereto as Exhibit 1, and as the same may hereafter be modified (the "Consent Order"); and

WHEREAS, the Consent Order provides for closure of the site of the former waste varsol UST and AST under the requirements of the Resource Conservation and Recovery Act (RCRA) pursuant to 40 CFR 264.310, which among other things, would require closure of a small area as a landfill and postclosure care of that area for up to 30 years, as may be determined necessary by EPD and federal EPA; and

WHEREAS, NWA will assume responsibility for taking all actions and for assuming all costs of complying with the Consent Order and all state and federal environmental regulations related to compliance with the Consent Order including providing post-closure care as required thereby; and

WHEREAS, the parties hereto desire to agree on matters permitting the Consent Order to be effectuated;

NOW THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained, and other consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. The City hereby consents to NWA entering into the Consent Order and to NWA taking all actions and performing any and all acts required by or that are otherwise necessary and appropriate to comply with the terms and conditions of the Consent Order. As more fully provided below, NWA shall indemnify and hold harmless the City, its Mayor, Council members, commissioner, officers, officials, agents and employees from all costs, damages and expenses necessary to comply with the terms and conditions of the Consent Order. NWA will provide the City with a copy of all documents it submits or receives from the State EPD or the Federal EPA related to compliance with the Consent Order, including but not limited to "work plans", "closure plans", "post closure care plans and certification of final post closure care. Further NWA shall permit the City to review, inspect and copy all current and future documents and records of whatever type, related to the consent order, except such documents which are subject to attorney-client privilege or other applicable privilege.

2. Without limiting Section 1 hereof, the City agrees that after expiration of the Lease, NWA will continue to have the limited right to enter the AMB premises for the sole purpose of fulfilling its obligations under the Consent Order with respect to the area addressed in the Consent Order (the "Affected Area") at NWA's sole cost.

3.A. To the fullest extent permitted by law, NWA shall indemnify and hold harmless the City, its Mayor, Council members, commissioner, officers, officials, agents and employees ("Indemnitee" or "Indemnities") from and against all claims, lawsuits, damages, claims of damages, injuries, obligations, losses, demands, causes of actions, judgments, attorney's fees, costs and charges, including, but not limited to claims by third parties for expenses of any nature or form, by or on behalf of any person or entity arising in any manner out of or by reason of NWA's failure to comply with the requirements of the Consent Order or any issues arising out of or caused as a result of NWA's use of the former waste varsol UST and AST site; provided, however, that NWA's obligation to pay or reimburse any Indemnitee for attorneys fees, expenses, costs or charges relating to the defense or settlement of any of the matters covered by the indemnification provisions of paragraphs 1. and 3.A. shall be governed exclusively by subparagraphs 3.B., 3.C., 3.D. and 3.E. below. The indemnity provided in this Section shall not apply to any liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, its agents or employees. (This exception is included solely to insure the validity and enforceability of this indemnity provision under Georgia law and, in particular, O.C.G.A. Section 13-8-2, as amended, and not otherwise intended to narrow the indemnification contained in this Section.)

3.B. If any claim, action, lawsuit, or proceeding seeking or asserting damages, claims of damages, injuries, obligations, losses, demands, causes of actions, judgments, attorney's fees costs and charges, within the meaning of paragraphs 1 and 3.A above ("Claim") is brought against any Indemnitee, the Indemnitee shall give written notice of such Claim to NWA within fifteen (15) days after the earlier of the date on which Indemnitee is properly served with or receives any notice of the Claim. NWA shall have both the right and the duty to assume the

defense of the Claim. NWA shall give written notice showing that NWA will assume defense of the Claim (i) within thirty (30) days after NWA receives such written notice of a Claim or (ii) if the claim requires a response in any legal action against the Indemnatee in less than thirty (30) days (and such response deadline cannot be postponed) or reasonably requires that the Indemnatee file a legal action of its own in less than thirty (30) days (and the Indemnatee's notice of the Claim to NWA specifies which event applies) then the date shall be ten (10) days after NWA receives such written notice of Claim.

3.C. Any Indemnatee's failure to give NWA written notice of a Claim shall not relieve NWA of its obligations under this Section unless (i) the Indemnatee failed to give NWA the required written notice of Claim within the time provided herein, and (ii) NWA or any of its defenses against the Claim is prejudiced by the failure of Indemnatee to give such notice or if there is a default of the action and said action cannot be reopened by order of court. If both of the conditions in the foregoing 3.C.(i) and (ii) exist as to a Claim, then NWA shall be relieved of any further obligation to the Indemnatee (or parties claiming through the Indemnatee) as to that Claim.

3.D. NWA may litigate or settle such Claim in NWA's discretion, and in any manner NWA deems appropriate, using counsel selected by NWA. Said counsel may not have a conflict of interest with Indemnatee; provided, however, that said counsel shall not be deemed to have a conflict of interest solely because said counsel represents, is selected by, or is paid by, NWA. The Indemnatee may participate in the defense to the extent of its interest at the Indemnatee's expense and NWA shall have no obligation to reimburse the Indemnatee for such expense.

3.E. If NWA fails to assume the defense of any Claim on behalf of Indemnatee after receiving written notice as prescribed in paragraph 3.B. above, or if NWA abandons the defense of any Claim after assuming its defense, the Indemnatee may defend against such Claim in such manner as it deems appropriate; provided, however, that the Indemnatee must give written notice to NWA of the Indemnatee's decision to defend the Claim. NWA shall have the right to cure its failure or abandonment of the defense of the Claim, and to assume or resume exclusive control of the defense of the Claim, by giving notice to Indemnatee, within fifteen (15) days of NWA's receipt of the Indemnatee's written notice under this subparagraph 3.D., that NWA is assuming or resuming the defense of the Claim. If NWA gives such notice of cure stating that it assumes or resumes the defense of the Claim, then immediately upon receipt of NWA's notice of cure the Indemnatee shall relinquish control of the defense of the Claim to NWA. NWA shall within ninety (90) days reimburse the Indemnatee for the amount of all expenses, legal and otherwise, reasonably and necessarily incurred by the Indemnatee in connection with the defense against such Claim after NWA's failure to defend or abandonment of the defense of the Claim, through the date on which Indemnatee receives NWA's notice of cure. Any attorney fees, costs, charges or expenses of Indemnatee incurred after the date on which Indemnatee receives NWA's notice of cure shall be governed exclusively by subparagraph 3.C. above. If NWA does not so cure, then NWA nevertheless may participate in the defense to the extent of its interest at NWA's expense). If NWA does not so cure as provided herein, then NWA shall within ninety (90) days of receipt of each of Indemnatee's bills reimburse the Indemnatee for the amount of all expenses, legal and otherwise, reasonably and necessarily incurred by the Indemnatee in connection with the defense against such Claim. No such Claim shall be settled without NWA's prior written approval and NWA shall not be responsible for any liability arising out of or related to any settlement entered

into by the Indemnatee in violation of this provision, unless NWA has a bill from Indemnatee which is one hundred and twenty (120) days or more in arrears, which it has failed to pay within thirty (30) days following written reminder notice of the unpaid balance on the bill. (Said reminder notice may be given by the City to NWA at any time at least thirty (30) days after the bill is first sent to NWA, and is intended by the parties as a means to avoid defaults caused by inadvertent loss or misdirection of any bill.) If no settlement of such Claim is made in accordance with this provision, NWA shall satisfy and pay in full any judgment rendered with respect to such Claim before the Indemnatee is required to do so, unless, at NWA's expense and direction, an appeal is taken under which the execution of the judgment is stayed. If and when a final judgment is rendered with respect to such Claim, NWA will satisfy and pay in full such judgment before the Indemnatee is compelled to do so.

3.F. No assumption of any defense by NWA or other action by NWA under this Section shall constitute a waiver of NWA's right to contest any Indemnatee's right to indemnification.

3.G. This Section shall survive after termination of this Agreement; provided, however, that the indemnity provided for in this Section shall apply only to events, fact or circumstances arising, occurring or in existence prior to any such termination.

4. Nothing in the Agreement provides or implies that the parties hereto may not at some future date agree to extend the Lease or otherwise enter into an agreement pursuant to which NWA would continue to lease part of all of the AMB premises after the expiration date of the Lease.

5. Unless any future Lease amendment, Lease extension or other lease agreement expressly so provides, this Agreement shall continue in full force and effect until all obligations of NWA under the Consent Order are fully satisfied.

6. In the event that any one or more of the provisions of this Agreement shall, for any reason, be held illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

7. Neither party hereto shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, act of God, acts of public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or other circumstances of any nature which are not within the control of that party.

8. In no event shall the term of this Agreement extend for a period greater than fifty (50) years from the above-stated effective date thereof.

9. This agreement respects the complete and entire agreement between the parties regarding the Consent Order and there are no other agreements, representations or understandings, either oral or written, between the parties with respect to the subject matter of

this agreement, except as set forth herein. This agreement cannot be modified except in mutual agreement by both parties as evidenced in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first written above.

APPROVED AS TO INTENT

CITY OF ATLANTA

General Manager of Aviation

Mayor

Acting Commissioner of Finance

Clerk of Council
[SEAL]

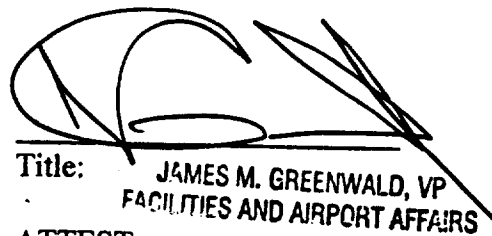
RECOMMENDED:

APPROVED AS TO FORM:

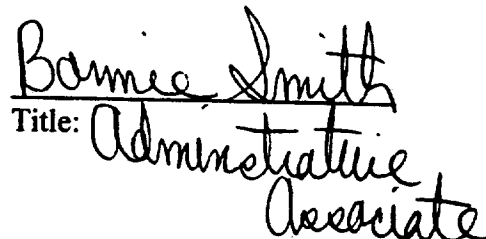
Chief Administrative Officer

City Attorney

NORTHWEST AIRLINES, INC.


Title: JAMES M. GREENWALD, VP
FACILITIES AND AIRPORT AFFAIRS

ATTEST:


Title: Administrative Associate

**Large
document
attached**